IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Deepak & Others Vs. State of Rajasthan
(D.B. Criminal Appeal No.363/2004)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 19-3-2004 in Sessions Case No.163/2001 passed by Shri Bhagwan Sharda, RHJS, Additional Sessions Judge (Fast Track) No.1, Ajmer.

Date of Judgment: September 14, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Arvind Kumar Gupta] for the appellants.
Mr. Rinesh Gupta]
Mr. Harsh Saini]

Mr. M.L.Goyal, Public Prosecutor for the State.
Mr. K.A. Khan, for the complainant.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in this appeal is to the judgment dated March 19, 2004 of the learned Additional Sessions Judge (Fast Track) No.1 Ajmer whereby the appellants, five in number, were convicted and sentenced as under:-

Appellant Deepak:
U/s.302 IPC:
To suffer imprisonment for life and fine of Rs.7000/-, in default to further suffer simple imprisonment for six months.

U/s.307 IPC:
To suffer rigorous imprisonment for five years and fine of Rs.5000/-, in default to further suffer simple imprisonment for three months.

U/s.323 IPC:

To suffer rigorous imprisonment for one year and fine of Rs.1000/-, in default to further suffer simple imprisonment for one month.

U/s.4/25 Arms Act:

To suffer rigorous imprisonment for one year and fine of Rs.1000/-, in default to further suffer simple imprisonment for one month.

Appellants Asha, Vimla, Sushila and Jyoti:
U/s.323/34 IPC:

Instead of awarding punishment at once granted benefit of probation under section 4 of Probation of Offenders Act to maintain good behaviour for one year.

Substantive sentences were ordered to run concurrently.

2. The prosecution story as unfolded during trial is as under:-

On April 12, 2001 at 8.30 PM a telephonic message was received at Police Station Ganj Ajmer about the quarrel between Harijans in Longiya Mohalla. Since the injured persons were removed to the Hospital, the police squad reached to the hospital where informant Kamla (Pw.23) handed over a written report (Ex.P-25) to the police with the averments that appellant Deepak inflicted injuries on her person as well as on the person of Pankaj (Pravindra) as a result of which Pankaj died on the spot. Appellants Asha, Vimla, Sushila and Jyoti were also named as assailants. On that report a case under sections 147, 148, 149, 452, 307, 302, 323, 509 and 392 IPC was registered and investigation commenced. Autopsy on the dead body was performed, necessary memos were drawn, statements of witnesses were recorded and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1 Ajmer. Charges under sections 302, 307, 323, 324

IPC 4/24 Arms Act were framed against Deepak and against other accused charge under section 323/34 was framed, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 24 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. Death of Pravindra Kumar @ Pankaj was undeniably homicidal in nature. As per post mortem report (Ex.P-19) following ante mortem injury was found on the dead body:-

> "Stab wound 3 x 2cm x ?deep penetrating into the chest cavity pierced in 5th inter costal space of left side of chest interiorly, Elyptical in shape. The wound is situated 6cm below and forward the inner place of the left nipple.
> On dissection of chest: The external wound is puncturing the 5th inter costal space muscles obliquely which is 3 x 2cm in size. There is no cut on the rib margins. Left side pleural cavity is filled with partially clotted blood. There is a cut corresponding to the size of cut in inter costal muscle on parietal pluera. There is a cut 2.5 x 2cm in size on paricardim above the superior and medial border in the area of Rt. ventricle. The pericardial sac is filled with partially clotted blood. There is a cut of the Rt. ventricle 2 x 1.5 cm in size terminating directly into the chamber of Rt. ventricle."

In the opinion of Dr. Harbans Singh (Pw.10) who conducted autopsy the cause of death was shock and excessive bleeding from the heart.

4. Sushila (Pw.5) vide injury report (Ex.P-32) received Hematoma 2 x 2cm on mid frontal area and Hematoma 2 x 2cm back of head. Ramesh (Pw.12) vide injury report (Ex.P-33) received one incised wound spendle

shape at lower part of Rt. abdomen obliquely placed 4cm x ¾ cm x ?deep fresh bleeding clean cut margins of wound and Raju (Pw.15) vide injury report (Ex.P-34) sustained one hematoma swelling 2cm x 2cm occipital region. Smell of alcohol from mouth was found. Whereas Kamla (Pw.23) vide injury report (Ex.P-35) received one lacerated wound 4cm x 2cm x skin deep at Rt. dorsum hand. The appellant Deepak also sustained injuries on his person. He vide injury report (Ex.P-36) received one CA & wound at metacarpal (crushing cut) phalangeal joints of Rt. hand & forwards rest of dorsal with with exposure of muscle, tenders etc. with fresh bleeding. Smell of alcohol from mouth was found.

5. It is contended by learned counsel for the appellants that appellant Deepak and the deceased were near relatives and neighbours. The incident occurred all of a sudden while they were consuming liquor. Their relations were cordial. Kamla (Pw.23) in her cross examination deposed thus:-

> "दीपक मेरे देवर का लडका है। यह बात सही है कि दीपक के घर का रास्ता हमारे घर के पास से निकलता है। उक्त झगडा हुआ उससे पहले दीपक का हमारे से कोई झगडा नहीं था।"

6. Having analysed the evidence adduced at the trial by the yardstick of probabilities, its intrinsic worth and animus of witnesses we find that the incident occurred while appellant Deepak and members of complainant party were sitting together and consuming liquor. They had a scuffle on trivial matter and in the course of sudden fight the deceased as well as appellant Deepak sustained injuries. Evidently appellant Deepak and deceased were neighbours and had no enmity. The injury received by appellant was not explained by the prosecution. We also find that sanction of

District Magistrate to prosecute Deepak under Section 4/25 Arms Act was not obtained. The origin and genesis of the incident appears to have been withheld.

7. It is well settled that for an offence to fall under the category of murder (i) there must be bodily injury (ii) the accused must have intended that particular injury and (iii) that bodily injury must be sufficient in the ordinary course of nature for cause death. Where a case falls under either of the following classes, it is within the ambit of Section 304 Part I IPC:

> (1) When the case falls under one of the other clause of Section 300 IPC but is covered by the exceptions to that section.
> (2) Where the injury caused is not the higher degree of likelihood which is covered by the expression "sufficient in the ordinary course of nature to cause death" but it is of a lower degree of likelihood generally spoken of as an injury "likely to cause death" and the case also does not fall under cl.(2) of Section 300.

8. Clause secondly appended to Section 300 IPC deals with acts done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom harm is caused. The mental attitude here is two fold. There is first the intention to cause bodily harm and next there is the subjective knowledge that death will be likely consequence of the intended injury.

9. In such view of the matter we can impute the intention to appellant that injury inflicted by him on the vital part of the body of the deceased was likely to cause death and this act of appellant comes within the mischief of Section 304 Par I of the Indian Penal Code. So far the appellants Asha, Vimla, Sushila and Jyoti are concerned the possibility of their over

implication cannot be ruled out.

10. For these reasons, we dispose of the instant appeal in the following terms:-

(i) We allow the appeal of appellants Asha, Vimla, Sushila and Jyoti and acquit them of the charge under section 323/34 IPC. They were released on probation for a period of one year and that period has already been expired.

(ii) We partly allow the appeal of appellant Deepak and instead of section 302 we convict him under section 304 part I IPC and sentence him to suffer rigorous imprisonment for ten years and fine of Rs.1000/- in default to further suffer one month simple imprisonment. We however maintain his conviction and sentence under sections 307 and 323 IPC. The sentences shall run concurrently. Appellant Deepak stands acquitted of the charge under section 4/25 Arms Act.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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